

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
OCTOBER 8, 2004**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on October 8, 2004. The meeting was tape-recorded and the tape is on file at the ABC Commission/Legal Division.

**ROLL CALL**

Commission Member Mike Joyner and Commissioner Ricky Wright were present at the meeting. Chairman Douglas A. Fox was unable to attend the meeting but had appointed Commission Member Joyner as acting chair at the September 17, 2004, meeting.

**MINUTES OF SEPTEMBER 17, 2004 MEETING**

Commissioner Joyner asked Commissioner Wright if he had received the minutes from the September 17, 2004 meeting. Commissioner Wright stated that he had received the minutes. Commissioner Wright made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Joyner. So Ordered.

**EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST**

As required by Executive Order Number One, Commissioner Joyner asked Commissioner Wright if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Wright stated that there were none. Commissioner Joyner also stated that he had no conflicts of interest.

**I. HEARING CASES- 65 listed**

Commissioner Joyner asked Assistant Counsel LoRita K. Pinnix if there were any contested cases to come before the Commission. Ms. Pinnix stated that there were no contested cases. Commissioner Joyner called for a motion to accept the offers in compromise for the hearing cases, and Ms. Pinnix stated that the Commission typically deals with the Orders of Compromise for the first offense cases first, and requested that First Offense Case #1, B L's Discount Beverage, be continued to the November 12, 2004, meeting. Commissioner Wright made a motion to ratify the Offers in Compromise for the first offense cases. Seconded by Commissioner Joyner. So ordered.

#29 – 4<sup>th</sup> Street Filling Station – Ms. Pinnix stated that corporate officer Fred Vlasits was present and wished to speak to the commission regarding his case. Mr. Vlasits stated that on October 24, 2003, the management of his restaurant picked up a shipment of spirituous liquor from the authorized ABC outlet. While stocking the bottles at the restaurant, they discovered a case containing bottles that had not been stamped with tax stamps. Mr. Vlasits contacted Jeff Cloud at

the ABC outlet and explained the situation, and Mr. Cloud came out within a half-hour of the call and stamped the bottles. However, Mr. Cloud missed two bottles that had already been placed on the shelves. The following Friday, ALE conducted an inspection of the premises, found the unstamped bottles, and issued the restaurant a citation for possessing spirituous liquor containers not bearing mixed beverage tax stamps.

Commissioner Joyner asked Ms. Pinnix if she had any further information. Ms. Pinnix stated that she had contacted Mr. Cloud, who confirmed the events as told by Mr. Vlasis. She stated that the only reason a written warning was not issued in this case is because 4<sup>th</sup> Street Filling Station had a similar prior violation within the past year. Mr. Vlasis stated that his business accepted full responsibility for the prior violation, as his attention was divided between two restaurants at the time. Since then, one of the restaurants had been sold, allowing him to devote his full attention to 4<sup>th</sup> Street Filling Station.

Commissioner Joyner stated that he wished to dismiss the violation completely and requested the appropriate language for the motion. Ms. Pinnix stated that a written warning could be issued in lieu of an Order of Compromise. Commissioner Joyner asked if the written warning would be part of 4<sup>th</sup> Street Filling Station's permanent record, and Ms. Pinnix replied that it would. Commissioner Joyner stated that he did not wish to impact the restaurant's record at all, if possible, and asked if there were a way to dismiss the matter entirely. General Counsel Tim W. Morse suggested that the Commission enter a statement acknowledging receipt of the violation, but stating that no action was to be taken on it. Commissioner Joyner stated that he did not care for that option either, as it could be interpreted as seeming like the ABC Commission was not doing its job.

Commissioner Joyner requested the appropriate language for a motion to issue a written warning on 4<sup>th</sup> Street Filling Station. Ms. Pinnix offered the language. Commissioner Wright made a motion to issue a written warning with no monetary penalty. Seconded by Commissioner Joyner. So Ordered.

Assistant Counsel Renee Cowick brought a matter before the Commission concerning E and L Food Shop (Hearing Case #22 on the September 17, 2004 agenda). She stated that the permittee had voluntarily taken an active suspension prior to the Commission ratifying the Offer in Compromise at the last meeting. The permittee was gathering documentation proving that he received no shipments of alcoholic beverages from wholesalers during the suspension. Ms. Cowick asked that the Commission approve the amendment of the Order of Compromise to reflect the October compliance dates in order to give the permittee time to submit the documents to Ms. Cowick. Commissioner Joyner made a motion to amend the dates on E and L Food Shops' Order of Compromise. Seconded by Commissioner Wright. So ordered.

Commissioner Joyner made a motion to ratify the Offers in Compromise for the balance of the hearing cases. Seconded by Commissioner Wright. So ordered.

## **II. FIRST OFFENSE CASES – 39 listed**

The following is a list of first offense violation cases, in which Final Agency Decisions were signed by the Chairman on September 17, 2004, pursuant to the Commission's authorizing resolution dated November 8, 2002:

B L's Discount Beverage - 7005 East Wilkinson Boulevard Suite 1, Belmont, NC 28012  
Bi Lo 206 - 2204 Union Road, Gastonia, NC 28054  
Chilis Grill and Bar - 115 Carillon Drive, Garner, NC 27529  
Cielito Lindo - 103 East Main Street, Brevard, NC 28712  
Demetrios - 6928 Wilkinson Boulevard, Belmont, NC 28012  
Eckerd Drugs 1040 - 2206 West Franklin Boulevard, Gastonia, NC 28052  
Expresit Convenience Store 833 - 815 Hwy 90 East, Taylorsville, NC 28681  
George's Deli and Mini Market - 408 Old Country Home Road, Asheville, NC 28806  
Homestead B P - 2918 Guess Road, Durham, NC 27705  
Spinx 391 - 3600 Capital Boulevard, Raleigh, NC 27604  
Wilco 212- 1470 Hwy 70 West, Garner, NC 27529  
Wal Mart Supercenter 1191 - 501 Hampton Point Boulevard, Hillsborough, NC 27278  
Time Out Markets 3 - 16 Balsam Road, Waynesville, NC 28786  
Super Mercado Esmeralda - 121 South Crutchfield Street, Dobson, NC 27017  
Super Mercado Lupitas - 224-226-228 West Cabarrus Avenue, Concord, NC 28025  
Shop and Save - 7410 Hwy 73, Denver, NC 28037  
Sams Mart 28 - 7008 Albemarle Road, Charlotte, NC 28227  
Petro Express 51 - 2434 South New Hope Road, Gastonia, NC 28054  
Mernas Hibernia Shell - Route 5 Box 13674 Hwy 39 N, Henderson, NC 27536  
Kingsway 2 - 904 A Union Road, Gastonia, NC 28052  
Jacobs Fuel Mart 2 - 2305 South York Street, Gastonia, NC 28052  
Harris Teeter 77 - 1008 East Main Street, Cherryville, NC 28021  
Huff's Starmount - 3320 Capital Boulevard, Raleigh, NC 27604  
Hot Sot 2006 - 2500 South Main Street, Kannapolis, NC 28081  
Fast Track 120 - 1508 Yadkinville Road, Mocksville, NC 27028  
Food Lion 1279 - 75 Glen Road, Garner, NC 27529  
Cross Creek B P and Auto Center - 3834 Guess Road, Durham, NC 27705  
Charlotte Marriott City Center Hotel - 100 West Trade Street, Charlotte, NC 28202  
Applebees Neighborhood Grill and Bar 13 - 8018 Concord Mills Blvd, Concord, NC 28027  
Courtesy Mart 1 - 739 Ward Boulevard, Wilson, NC 27893  
Danny's Place - 300 North Church Street, Concord, NC 28025  
Food Lion 1406 - 6932-A Market Street, Wilmington, NC 28405  
Handy Pantry 164 - 505 Central Avenue, Belmont, NC 28012  
Dragon Court Chinese Restaurant - 4520-40 North Tryon Street, Charlotte, NC 28213  
Eckerd Drugs 1106 - 116 West Garrison Boulevard, Gastonia, NC 28052  
Eckerd Drugs 8084 - 545 Cox Road, Gastonia, NC 28054  
Edgewood Mini Mart - 1205 Edgewood Road, Bessemer City, NC 28016  
Kingsway 15 - 2701 Union Road, Gastonia, NC 28056  
Neighbors 15 - 8269 US Hwy 601, Dobson, NC 27017  
Neighbors Food Store 23 - 308 South Main Street, Dobson, NC 27017

Pho Daravan Restaurant - 4520 North Tryon Street Suite 6, Charlotte, NC 28213  
Red Lobster 6241 - 8020 Concord Mills Boulevard, Concord, NC 28027  
Short Stop 72 - 300 South Sandhills Boulevard, Aberdeen, NC 28315  
Stuarts Super Store - 1201 South York Street, Gastonia, NC 28052  
29 Kwik Mart - 603 Hwy 29 North, Concord, NC 28025  
Lupies Café - 801 East Second Street, Lumberton, NC 28358  
Food Lion 985 - 1704 Harris Houston Road, Charlotte, NC 28213  
Food Lion 111 - 9848 Monroe Road, Matthews, NC 28105  
Food Lion 411 - 2804 Cheshire Road, Charlotte, NC 28262  
Pantry 242 - 144 South Main Street, Sparta, NC 28675  
Farm and Country Store - 6281 Old Wire Road, Laurel Hill, NC 28851

Commissioner Wright made a motion to adopt the Offers in Compromise for these first offense cases, with the exception of First Offense Case #1- B L's Discount Beverage, which Ms. Pinnix requested be carried over to the November 12, 2004 meeting. Commissioner Joyner seconded the motion. So ordered.

### **III. ABC STORE LOCATION – DURHAM COUNTY ABC BOARD**

Administrator Michael Herring continued an issue from the September 17, 2004 hearing concerning the opening of a new ABC store in Durham, North Carolina. Mr. Herring stated that the Durham County ABC Board had held a public meeting to hear concerns from the community regarding the proposed store opening. On September 27, 2004, Mr. Herring received an email from the general manager of the Durham County ABC Board stating that they wished to withdraw their request for approval based on issues raised at the meeting.

### **IV. ABC STORE LOCATION – WAKE COUNTY ABC BOARD**

Mr. Herring also continued the matter of a proposed Wake County ABC store location from last month's meeting. He stated that there were still some problems with getting a sign stating the Wake County ABC board's intent to open an ABC store posted at the proposed location, and wished to continue the matter until such a time as the sign could be posted for the required thirty days.

### **VII. OTHER BUSINESS**

General Counsel Tim Morse provided information concerning an exemption request filed by Anheuser-Busch, who sought to enter into a sponsorship agreement with the Charlotte Bobcats for advertising and broadcast rights at the Charlotte Coliseum. The agreement would extend from this year through next year, and include the new Charlotte arena, which is currently under construction. The proposed retail partner is the Charlotte Regional Visitors Authority, an entity independent from the Charlotte Bobcats organization.

Mr. Morse stated that the details of the request parallel many of the items of exemption requests the Commission approved in the past, with one exception- an error that resulted in an item in the contract between the Charlotte Regional Visitors Authority and the Charlotte Bobcats that allows

the Bobcats to dictate which brands of alcoholic beverages are sold at the arena, which is not permitted by ABC law. Jonathan Fine, counsel for the Bobcats, agreed to an item added to the contract that stated the Bobcats agreed to waive the non-compliant provision.

The value of the contract is approximately nine million dollars, payable over the course of eleven years. Mr. Fine stated to Mr. Morse that the retailer will change when the Bobcats move to the new arena, and that a new contract will be drawn up at that time, modeled after the agreement between the Carolina Hurricanes and the R B C Center in Raleigh.

Mr. Joyner requested further information about the Carolina Hurricanes' contract, and Mr. Morse explained that the Hurricanes had come before the ABC Commission with an request to operate concession sales themselves, and the ABC Commission had denied that request, stating that an independent retailer must be used for concession sales. The Hurricanes hired V A B for this purpose, and the ABC Commission approved the new exemption request between the two organizations.

Mr. Joyner sought clarification about the flow of money in the contract, stating that the money flows from Anheuser-Busch to the Carolina Bobcats. Mr. Morse verified the statement. Mr. Joyner continued by asking, since the Charlotte Regional Visitors Authority is the licensed ABC permittee instead of the Carolina Bobcats, what part of the ABC law dictates that the Bobcats' request must come before the Commission.

Mr. Morse clarified by stating again that the exemption request was filed by Anheuser-Busch. According to N.C.G.S. 18B-1116, an industry member cannot exert undue pressure on a retailer's sales, advertising or operating procedures. In this request, the industry member is Anheuser-Busch, the retailer is the Charlotte Regional Visitors Authority, and since no money in this agreement is going directly or indirectly to the Charlotte Regional Visitors Authority, there does not seem to be any evidence that Anheuser-Busch will exert undue pressure on them. Mr. Morse stated that the Charlotte Regional Visitors Authority has complete control over the brands that will be sold, and will submit reports concerning the taps used and the sales from those taps to the ABC Commission. Furthermore, Mr. Morse explained that, according to the contract, Anheuser-Busch would not be allowed to crowd concession areas with Anheuser-Busch advertisements.

Mr. Joyner asked when the Carolina Bobcats wanted this contract to become effective. Mr. Morse stated that training camp opened earlier in October and that the first payment on the contract was scheduled to take place on November 1, 2004. Mr. Joyner asked if the Bobcats would have to come before the Commission again after moving to the new coliseum and taking on a new retailer, and Mr. Morse answered that they would, since a new retailer would render the contract null and void.

Mr. Joyner made a motion to continue the matter until such time as the chairman could be brought into the discussion and decision - making process. This matter was continued to the November 12, 2004 meeting. Seconded by Commissioner Wright. So ordered.

Ms. Pinnix requested dates for the January, February and March commission meetings in 2005. Administrative Assistant Theresa Avery stated that dates had been proposed, but were pending approval by the Commission. The proposed dates were January 7, 2005, February 11, 2005, and March 11, 2005. Mr. Joyner made a motion to establish the hearing dates. Seconded by Commissioner Wright. So ordered.

With no further business, the meeting adjourned.

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Douglas A. Fox  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

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Jason Hall, Legal Division